

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

| | | |
|--------------------------------|---|-------------|
| CNN AMERICA, INC. |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | No. 14-1180 |
| |) | |
| NATIONAL LABOR RELATIONS BOARD |) | |
| |) | |
| Respondent |) | |
| |) | |

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO
HOLD THE CASE IN ABEYANCE UNTIL THE BOARD RULES ON
PENDING MOTIONS FOR RECONSIDERATION**

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board, by its Deputy Associate General
Counsel, respectfully moves the Court to hold this case in abeyance until the
Board rules on the pending motions for reconsideration filed with the Board
in the underlying case, and shows:

1. On September 15, 2014, the Board issued an Order against
CNN America, Inc. (“CNN”), which is reported at 361 NLRB No. 47,
finding that CNN committed unfair-labor practices in violation of the
National Labor Relations Act.

2. On September 16, 2014, CNN filed a petition for review of the
Board’s Order.

3. The National Association of Broadcast Employees and Technicians, Communications Workers of America, Local Union No. 31, the Charging Party before the Board, filed a motion to intervene in this case, which is still pending before the Court.

4. On November 12, 2014, CNN and the Board's General Counsel each filed with the Board a motion for reconsideration of its Order.

5. By the Court's Order of November 5, 2014, the Board's certified index to the record is due on December 3, 2014, as extended.

6. Presently, the aforementioned motions for reconsideration are pending before the Board.

7. Sections 10(d), (e), and (f) of the National Labor Relations Act (29 U.S.C. § 160(d), (e), and (f)) confer concurrent jurisdiction on the Court and the Board until such time as the Board files the record (or certified list) with the reviewing Court. Section 10(d) provides that "the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it" until the record has been filed with the Court. Section 10(e) and (f) provide that the Court shall have jurisdiction "[u]pon the filing of [a] petition" for enforcement or for review of a Board order, but that such jurisdiction does not become "exclusive" until the filing of the record with

the Court. *Accord Scepter, Inc. v. NLRB*, 448 F.3d 388, 391 (D.C. Cir. 2006), *UAW v. NLRB*, 677 F.3d 276, 277 (6th Cir. 2012); *Kronenberger v. NLRB*, 496 F.2d 18, 18 (7th Cir. 1974). Moreover, the Supreme Court long ago recognized that the Court lacks jurisdiction to prevent the Board's reconsideration if the record has not been filed. *In re NLRB*, 304 U.S. 486, 494 (1938).

8. Under this statutory scheme, the Board must retain the record in order to rule on the pending motions for reconsideration. The Board cannot presently file the certified list with the Court, because doing so would deprive the Board of jurisdiction to decide those motions. Consequently, the date for filing the certified list should be held in abeyance until such time as the Board rules on the pending motions.

9. Board counsel contacted Zachary Fasman, counsel for CNN, who stated that he agrees with this motion to hold all proceedings in abeyance until the Board has ruled on the motions for reconsideration. Keith Bolek, counsel for the Movant–Intevenor, informed Board counsel that he takes no position on the motion at this time.

WHEREFORE, the Board respectfully requests that the Court grant its motion to hold the case in abeyance until fifteen (15) days after the Board rules upon the pending motions for reconsideration.

Respectfully Submitted,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1099 14th Street NW
Washington, D.C. 20570

Dated at Washington, D.C.
this 1st day of December 2014

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2014, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

Dated at Washington, DC
this 1st day of December 2014

/s/ Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
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